

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 2003DE306	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/007468	International filing date (day/month/year) 08.07.2004	Priority date (day/month/year) 21.07.2003
International Patent Classification (IPC) or national classification and IPC C07F9/38		
Applicant CLARIANT GMBH		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																								
<p>4. This report contains indications relating to the following items:</p> <table> <tbody> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </tbody> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:
- international search (Rule 12.3 and 23.1(b))
 publication of the international application (Rule 12.4)
 international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):
- the international application as originally filed/furnished
 the description:
 pages 1-11 as originally filed/furnished
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____
- the claims:
 nos. 1-9 as originally filed/furnished
 nos.* _____ as amended (together with any statement) under Article 19
 nos.* _____ received by this Authority on _____
 nos.* _____ received by this Authority on _____
- the drawings:
 sheets _____ as originally filed/furnished
 sheets* _____ received by this Authority on _____
 sheets* _____ received by this Authority on _____
- a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. The amendments have resulted in the cancellation of:
- the description, pages _____
 the claims, nos. _____
 the drawings, sheets/figs _____
 the sequence listing (*specify*): _____
 any table(s) related to sequence listing (*specify*): _____
4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- the description, pages _____
 the claims, nos. _____
 the drawings, sheets/figs _____
 the sequence listing (*specify*): _____
 any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

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Box No. V **Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims	1 - 8	YES
	Claims	9	NO
Inventive step (IS)	Claims	1 - 8	YES
	Claims	9	NO
Industrial applicability (IA)	Claims	1 - 9	YES
	Claims		NO

2. Citations and explanations (Rule 70.7)

This report makes reference to the following documents (D1-D3) :

D1: SIDNEY H METZGER ET AL: "Highly Branched Alkylphosphorous Compounds. II. Synthesis of 1,1,2-Trimethylpropylphosphonyl Chloride" JOURNAL OF ORGANIC CHEMISTRY, vol. 29, no. 3, 1964, pages 627-630, XP002316581

D2: WISSMANN H ET AL: "New peptide synthesis" ANGEWANDTE CHEMIE. INTERNATIONAL EDITION, VERLAG CHEMIE. WEINHEIM, DE, vol. 19, no. 2, 1980, pages 133-134, XP002115465 ISSN: 0570-0833

D3: DIEMERT, KLAUS ET AL: "A convenient synthesis of phosphonic anhydrides. Trimmers $[RPO_2]_3$ (R = tert-butyl, 2-methylphenyl, 2,4,6-trimethylphenyl). Their structures and reaction products" EUROPEAN JOURNAL OF INORGANIC CHEMISTRY, (3), 361-366 CODEN: EJICFO; ISSN: 1434-1948, 1998, XP002316582

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Novelty:

The process described in the present application is not described in the prior art.

Therefore, the subject matter of claims 1-8 is novel (**PCT Article 33(2)**).

However, the use of cyclic phosphonic anhydrides in condensation reactions, for example, peptide synthesis, is known from D2 and D3. That cyclic phosphonic anhydrides are prepared by a novel process does not render the use of these compounds novel.

Therefore, the subject matter of claim 9 is not novel within the meaning of **PCT Article 33(2)**.

2. Inventive step:

D1, which is considered to represent the prior art closest to the subject matter of claim 1, discloses a process for preparing cyclic phosphonic anhydrides by reacting phosphonic acid derivatives with thionyl chloride, heating the resulting mixture over 5 hours, distilling off excess thionyl chloride and recrystallization using petroleum ether.

The subject matter of claim 1 thus differs from the known process in that phosphonic derivatives are reacted with ethanoic acid and at the same

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Box No. V **Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

time ethanoic acid and ethanoic anhydrides are distilled off before reactive distillation to give the cyclic trimer.

The problem addressed by the present invention may therefore be considered that of providing a further process for preparing cyclic phosphonic anhydrides.

A person skilled in the art would receive no incentive from the prior art to modify the process disclosed in D1 such that trimers are obtained by the reactive distillation of oligomeric phosphonic anhydrides (without the involvement of acid chlorides).

Therefore, the *subject matter of claims 1-8 is considered to involve an inventive step (PCT Article 33(3))*.

Since the subject matter of claim 9 is not novel, it cannot be considered to involve an inventive step (PCT Article 33(3)).

3. Industrial applicability:

The process claimed in the present application yields cyclic phosphonic anhydrides which are used as condensing agents and therefore the *subject matter of claims 1-9 is considered to be industrially applicable (PCT Article 33(4))*.